

OGC REVIEW COMPLETED

JBD

AWA

Dual Compensation Laws

STATINTL

1. [] has asked for advice on the following case involving a civilian employee of the Security Office. This employee came with OSS originally as a civilian. He was then commissioned in the Army and attached to OSS. Upon his discharge from the Army for a disability incurred in line of duty, he was again placed on the Special Funds' payroll as a civilian employee. In addition to his salary from Special Funds, he receives retired pay from the Veterans Administration at the rate of \$2200 a year. His total compensation from the Government exceeds \$3000 a year.

2. Section 59a of Title 5, U. S. Code provides as follows:

"(a) After June 30, 1932, no person holding a civilian office or position, appointive or elective, under the United States Government or the municipal government of the District of Columbia or under any corporation, the majority of the stock of which is owned by the United States, shall be entitled, during the period of such incumbency, to retired pay from the United States for or on account of services as a commissioned officer in any of the services mentioned in Title 37, at a rate in excess of an amount which when combined with the annual rate of compensation from such civilian office or position, makes the total rate from both sources more than \$3000; and when the retired pay amounts to or exceeds the rate of \$3000 per annum such person shall be entitled to the pay of the civilian office or position or the retired pay, whichever he may elect. As used in this section, the term 'retired pay' shall be construed to include credits for all service that lawfully may enter into the computation thereof.

(b) This section shall not apply to any person whose retired pay, plus civilian pay, amounts to less than \$3000; Provided, That this section shall not apply to regular or emergency commissioned officers retired for disability incurred in combat with an enemy of the United States or for disabilities resulting from an

of duty during an enlistment or employment as provided in Veterans Regulation Numbered 1 (a), part I, paragraph I. (June 30, 1932, ch. 314, § 212, 47 Stat. 406; July 15, 1940, ch. 626, § 3, 54 Stat. 761.)"

3. The civilian in question was not retired for disability incurred in combat or for disabilities resulting from an explosion of an instrumentality of war. If he were on Civil Service, it would seem clear that his case would fall within the prohibition of the statute. But since he is being paid from Special Funds, the receipt by him of a combined total in excess of \$3000 would probably not be illegal. However, I think that a policy decision should be made as to whether OSS wants to make salary payments to a discharged Army officer receiving retired pay in spite of the statutes on this matter.

STATINTL

4. [] informs me that there is no pending legislation to alter or amend 5 U.S.C. 59a.

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Legal Chrono

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